

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60258

FILE: B-185346

DATE: December 1, 1975

MATTER OF: John L. Molner Industries, Inc.

97639

DIGEST:

Where protest filed November 14, 1975, objects to Navy's actions in connection with two IFB's--bids having been opened on February 19, 1975, and September 16, 1975, under first and second IFB's, respectively--protest is untimely under 4 C.F.R. § 20 (1974) and Bid Protest Procedures (40 Fed. Reg. 17979 (1975)). Possible timely allegation which raises question concerning preaward survey procedures is not for consideration in any event, because GAO no longer reviews affirmative determinations of responsibility, absent showing of fraud or allegations that definitive responsibility criteria in solicitation were waived.

The protest of John L. Molner Industries, Inc. (Molner), involves two invitations for bids (IFB's) issued by the Naval Sea Systems Command. The first, No. N00024-75-B-6123, was issued on January 2, 1975. Bids were opened on February 19, 1975. Molner was the low bidder. Molner states it was orally advised that its bid was nonresponsive. On or about April 23, 1975, this IFB was canceled. Subsequently, on July 17, 1975, IFB No. N00024-76-B-6019 was issued. Bid opening was on September 16, 1975, and Molner submitted a bid.

Molner's protest, filed with our Office on November 14, 1975, objects to the determination that its bid under the first IFB was nonresponsive; questions why it was not notified of this determination in writing; objects to the cancellation of the first IFB and the issuance of the second because the disclosure of its bid price operated to its competitive disadvantage; and requests that our Office review the procedures followed by the Navy in regard to the two preaward surveys of Skyline Industries (Skyline), a bidder under the second IFB.

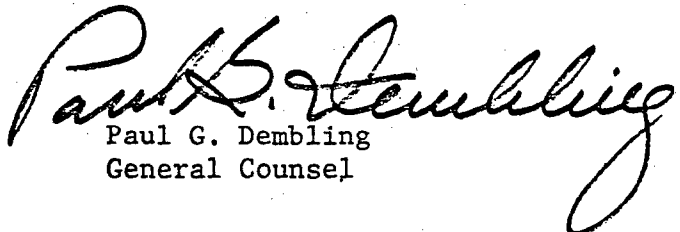
Under our Interim Bid Protest Procedures and Standards, 4 C.F.R. § 20 (1974), which were applicable prior to June 2, 1975, protests to

our Office were generally required to be filed within 5 working days after the basis for protest was known or should have been known, whichever was earlier. Our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)), effective June 2, 1975, liberalized this requirement by extending the time limitation to 10 working days. Under both sets of procedures, however, protests against apparent improprieties in an IFB are required to be filed prior to bid opening.

Considering these rules and the pertinent dates discussed supra, it is clear that Molner's protest allegations are untimely, with the possible exception of the allegation concerning the pre-award survey procedures. Molner's protest correspondence does not provide enough information to indicate whether its protest was filed within 10 working days after it knew or should have known the basis for its doubts concerning the preaward surveys.

However, we note that this point essentially involves the question of whether Skyline is a responsible prospective contractor under the second IFB. In this regard, our Office does not review protests against affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly were not applied. See Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative responsibility determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials, who must suffer any difficulties experienced by reason of a contractor's inability to perform. Molner's protest does not allege that Navy officials acted fraudulently or that definitive responsibility criteria were not applied in this case. Our Office does consider protests against determinations of nonresponsibility to provide assurance against arbitrary rejection of bids.

Accordingly, Molner's protest is not for consideration and we are closing our file in this matter.


Paul G. Dembling
General Counsel